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ABSTRACT

This paper identifies essential elements and definitions (under the 1997 Individuals with Disabilities Education Act Amendments) concerning procedural safeguard requirements when the behavior of a student requiring special education services prompts disciplinary action. These procedural safeguards include the requirement that Individualized Education Program (IEP) teams conduct functional behavioral assessments and develop behavioral intervention plans for students in certain disciplinary circumstances. In addition, IEP teams must conduct "manifestation determinations" and design interim alternative educational settings for such students. Individual sections of the paper summarize elements and definitions (including references to specific sections of the law) concerning the following areas: (1) elements of functional behavioral assessment; (2) elements of behavioral intervention plans; (3) elements of an alternative educational setting; and (4) elements of manifestation determination. (DB)

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Definitions and Essential Elements: Student Discipline Provisions of the Individuals with Disabilities Education Act of 1997

Developed by:
IDEA 97 Student Discipline Workgroup

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Introduction and Purpose

The recently reauthorized Individuals with Disabilities Education Act (IDEA 1997) and its proposed regulations include new requirements that must be addressed when the behavior of a student requiring special education services prompts disciplinary action. These new requirements represent the intent of Congress to broaden the alternatives available to school personnel to deal with disruptive student behavior and to balance these responses with procedural safeguards that are essential to ensure that students who require special education continue to receive a free, appropriate, public education.

These procedural safeguards include the requirement that Individualized Education Program (IEP) teams conduct *functional behavioral assessments* and develop *behavioral intervention plans* for students in certain disciplinary circumstances. In addition, IEP teams are charged with the responsibility to conduct *manifestation determinations* and design *interim alternative educational settings* for students requiring special education who become subject to certain disciplinary actions. Neither the reauthorized law nor proposed implementing regulations provide descriptions or definitions of these requirements. However, IEP teams will need to operationalize these concepts in a manner that will ensure that the requirements are met and that students requiring special education continue to receive a free, appropriate, public education.

This paper has been developed by the statewide IDEA 97 Student Discipline Workgroup. The purpose of the paper is to present a conceptual framework for putting these concepts into practice by proposing definitions for functional behavioral assessment, behavioral intervention plans, interim alternative educational setting, and manifestation determination. In addition, the paper provides an analysis of practices based in current rules and assessment standards which provide a basis for the identification of essential elements that comprise each of these requirements.

Elements of Functional Behavioral Assessment

In describing the requirements of the identification process for students who require special education, the Administrative Rules of Special Education (July 1995) refer to a number of assessment activities. Following are various concepts from the Rules that can be used to operationally define or describe the essential elements of a functional behavioral assessment as it pertains to the new discipline provisions in IDEA 97.

Definition of "Behaviorally Disordered" [41.5]

- Setting analysis data
- Individual behavioral data
- Individual trait data

Systematic problem solving process [41.47(3)]

- Description of the problem
- Data collection and problem analysis

General education interventions [41.48(2)b]

- Documented, measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern
- Communication with parents
- Collection of data related to the presenting problem or behaviors of concern

Full and individual evaluation [41.48(3)]

- Objective definition of the presenting problem
- Analysis of existing information, including results of general education interventions
- Identification of strengths or areas of competence
- Collection of additional information
- Multidisciplinary team conducts the assessment

In addition to concepts found in the Rules, the *Special Education Assessment Standards* (January 1996) describe elements of assessment related to decisions about special education entitlement, in particular decisions addressing eligibility and need. These concepts are also relevant to developing an operational definition or description of functional behavioral assessment.

First, in addressing entitlement decisions, concepts included in *Special Education Assessment Standards* (1996) and relevant to eligibility include the following.

Information sources [p. 4]

- Multiple sources of relevant information, including both qualitative and quantitative data, are collected.

Characteristics of the information used to make the decision [p. 4]

- Reliability and validity: Tests and other evaluation procedures and materials meet professional guidelines for individual decision-making.
- Nature of information: The information collected for determining special education eligibility should address all areas related to the behavior of concern. The data collected should be sufficient to reliably and validly document the presence of an educational disability.
- Non-biased: The information used to inform professionals' judgment about eligibility is collected in a manner that is not biased with respect to cultural, racial, linguistic, or gender differences.

Second, in addressing entitlement decisions, concepts relevant to need include the following.

Information sources [p. 5]

- Multiple sources of relevant information, including both qualitative and quantitative data, are collected.
- Selection of assessment procedures should be tailored to assess specific areas of an individual's educational needs.

Characteristics of the information used to make the decision [p. 5]

- Tests and other evaluation procedures and materials meet reliability and validity standards for individual decision-making documented in the professional literature.
- Student needs establish an understanding of the individual's performance in relationship to expectations.

Functional Behavioral Assessment Defined

Functional behavioral assessment can be generally defined as assessment that enhances understanding of the purpose and effect of the behavior(s) of concern, and which provides information that is useful in the development of a student's IEP. For students who become subject to disciplinary action, a functional behavioral assessment provides information that is useful in the development of a behavior intervention plan within the context of the IEP process.

Functional Behavioral Assessment: Essential Elements

With this general definition in mind, the concepts described above can be used to identify the following more specific, essential elements or features of a functional behavioral assessment.

Behavior Definition

- An objective and behaviorally specific definition/description of the behavior(s) of concern is developed.

Data Collection

- The scope and comprehensiveness of data collection is tailored to the particular behavior(s) of concern.
- Existing data are reviewed, particularly prior measurable and goal-directed attempts to address the behavior(s) of concern.
- Both qualitative and quantitative data are collected and considered.
- Strengths or areas of competence are identified.
- Data collection is individually tailored.
- Data collection procedures are valid and reliable.
- Information is collected and considered in a culturally competent manner.
- Additional information is collected when needed.
- When relevant, data is collected from multiple settings; i.e., school, home, and community.
- When relevant, diagnostic/descriptive information is collected through collaboration with professionals/agencies external to the school.

Analysis

Multiple sources of relevant information are considered, including:

- the setting(s) in which the behavior(s) occurs;
- the specific behaviors of the student; and
- student traits, including personal/affective characteristics.

Analysis focuses on:

- understanding the purpose and function of the behavior(s) of concern;
- the individual's social, emotional and behavioral functioning in relationship to expectations;
- the development of interventions; and
- the identification of needed supports.

Communication with parents throughout the functional behavioral assessment process is critical. The IEP team always includes parents.

Elements of Behavioral Intervention Plans

The Administrative Rules of Special Education (July 1995) and proposed IDEA regulations (October 1997) refer to a number of intervention activities. Following are various concepts from the Rules and proposed regulations that can be used to operationally define or describe the essential elements of a behavioral intervention plan as it pertains to the new discipline provisions in IDEA.

Systematic problem solving process [41.47(3)]

- Intervention design and implementation
- Progress monitoring
- Evaluation of intervention effects

General education interventions [41.48(2)]

- Documented, measurable and goal-directed attempts to resolve the presenting problem or behavior of concern
- Communication with parents
- Intervention design and implementation
- Systematic progress monitoring to measure intervention effects

The IEP: Annual goals and short term instructional objectives [41.67(2)]

- Annual goals and instructional objectives

The IEP: Consideration of special factors [Proposed regulations: 300.346(a)(2)(i)]

- Positive behavioral interventions

In addition to concepts found in the Rules and proposed regulations, the *Special Education Assessment Standards* (January 1996) describe key elements of intervention planning and monitoring. These concepts are also relevant to developing an operational definition or description of behavioral intervention plans.

First, <u>intervention planning</u> should address the following.

Characteristics of the information used to make the decision [p. 7]

- Tests and other evaluation materials used for making instructional planning decisions are related to the skills to be learned in direct and obvious ways.
- The intervention strategies are selected based on the nature of the defined problem, parent input, and professional judgments about the potential effectiveness of strategies.

Communication with clarity [pp. 7-8]

- The goal is a written statement of projected improvement or remediation of the problem.
- The goal is written in a way that is directly related to the present level of educational performance.
- Measurable objectives are written that are clearly related to accomplishment of the goal.

Application of information [p. 8]

- There is a clear link between the assessment data collected and the intervention program.

Second, monitoring should address the following:

Characteristics of the information used to make the decision [p. 9]

- Learner performance data are collected and documented on a regular and frequent basis.
- Modifications in the intervention plan are made, as frequently as necessary, based on progress monitoring.

Communication with clarity [p. 9]

- Progress monitoring information should be summarized and documented in a way that communicates whether the intervention is accomplishing its intended effect.

Application of information [p. 9]

- Progress monitoring information is used frequently and repeatedly to determine whether the anticipated outcomes for the individual are being met and whether the placement and services are appropriate to the individual's learning needs.

Behavioral Intervention Plan Defined

A behavioral intervention plan can be generally defined as a written, specific, purposeful and organized plan which describes positive behavioral interventions and other strategies that will be implemented to address goals for a student's social, emotional and behavioral development. In addition, for students whose behavior prompts disciplinary action by the school, the behavioral intervention plan addresses the behavior(s) of concern that led to conducting a functional behavioral assessment.

Behavioral Intervention Plan: Essential Elements

With this general definition in mind, the concepts described above can be used to identify the following more specific, essential elements or features of a behavioral intervention plan.

Intervention Planning and Implementation

- There is a clear link between the functional behavioral assessment data collected and the intervention(s) selected.
- The intervention strategies are selected based on the nature of the defined problem, parent input, and professional judgments about the potential effectiveness of strategies.
- Measurable goals are written which clearly describe projected improvement or remediation of the problem.
- Measurable goals are directly related to the student's present level of educational performance.
- Measurable objectives are written that are clearly related to accomplishment of the goal.
- Goals and objectives include strategies that will increase positive behavior and decrease undesirable behavior, including planned disciplinary procedures, if necessary.
- Strategies for generalizing and maintaining positive behavior outside of the training situation are included.
- The behavioral intervention plan is implemented with integrity; i.e., interventions are actually implemented in the manner in which they were designed, and consistent with established professional standards and practices.

Monitoring of Intervention Effects

- Student performance data are collected and documented on a regular and frequent basis.
- Modification of the behavioral intervention plan is made as frequently as necessary, based on monitoring information.
- Progress monitoring information is summarized and documented in a way that communicates whether the intervention is accomplishing its intended effect.
- Progress monitoring information is used frequently and repeatedly to determine whether the anticipated outcomes for the individual are being met and whether the placement and services are appropriate to the individual's learning needs.

Communication with parents is critical throughout the development and implementation of a behavioral intervention plan. The IEP team always includes parents.

Elements of Alternative Educational Setting

Current Iowa Rules of Special Education (July 1995) do not specifically address *alternative educational settings* or *interim alternative educational settings*. Prior to the reauthorization of IDEA in 1997, this federal law provided only brief, narrowly defined attention to the concept of *interim alternative educational setting* specific to students determined to have brought a weapon to school. While the reauthorized IDEA statute and proposed federal regulations give this concept much broader attention with respect to student discipline, an operational description or definition of *alternative educational settings* or *interim alternative educational setting* is not provided.

The particular elements or features of an *interim alternative educational setting*, or any alternative educational setting, may be inferred and understood in relation to the following existing relevant provisions in Federal law and state regulations.

Availability of Special Education [41.3(1)]
Special education must be made available to all children requiring special education to ensure the provision of a free, appropriate, public education.

Local School District Responsibility [41.3(2)]
It is the responsibility of each student's resident LEA to provide, or make provision for, appropriate special education and related services to meet the requirements of state and federal statutes and rules.

Free, Appropriate, Public Education [41.3(3)]
LEAs and AEAs shall provide special education and related services at public expense, under public supervision and direction, and at no cost to the parents. Special education must be provided in conformity with an individualized education program (IEP).

Full Educational Opportunity [41.3(4)]
Full educational opportunity includes the variety of educational programs and services and nonacademic and extracurricular services and activities that are available to students who do not require special education.

Appropriate Program [41.3(6)]
Each child requiring special education shall be provided a specially designed education program that is based on the student's specific educational needs.

Shared Responsibility [41.3(7)]
General education and special education personnel share responsibility in providing appropriate educational programs for students and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

Family Involvement [41.3(8)]
LEAs and AEAs share responsibility in promoting partnerships to increase family involvement and participation in the social, emotional, and academic development of students receiving special education.

Least Restrictive Environment [41.3(5); 41.37(2); 41.38; 41.39(3); 41.70(2); 41.82(2); 41.83]

- To the maximum extent appropriate, children requiring special education are educated with individuals who do not require special education. [41.37(2)b; 41.82(2)]
- Separate schooling or removal of children requiring special education from the general education environment occurs only when the nature or severity of the individual's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [41.3(5); 41.37(2)b]
- Unless the IEP requires some other arrangement, the individual is educated in the school that the individual would attend if not disabled. [41.39(3)]
- A continuum of services is available to meet the needs of eligible individuals for special education. [41.38; 41.83]
- When developing the IEP, the IEP team shall consider the following questions:
  a) What accommodations, modifications and adaptations does the individual require?
  b) Why can't these accommodations, modifications and adaptations be provided within the general classroom?
  c) Is there a potential detriment to the individual if served in the classroom?
  d) How will the individual's participation in the general classroom impact the other students? [41.70(2)]

In addition to these existing relevant provisions, the new statute and proposed regulations also identify three essential requirements (300.522):

- The interim alternative educational setting must be determined by the IEP team.
- The interim alternative educational setting must be selected so as to enable the child to participate in the general curriculum, although in another setting; and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP.

- The interim alternative educational setting must be selected so as to include services and modifications designed to address the behavior that results in the child being removed from the current educational placement so that it does not recur.

Alternative Educational Setting Defined

An alternative educational setting is defined as a setting outside of the general education classroom that has been determined to be necessary and appropriate to meet the behavioral and academic needs of a student with a disability. An *interim alternative educational setting* is an educational setting in which a student requiring special education may be placed for up to 45 calendar days when disciplined for bringing a weapon to school, using or selling illegal drugs at school, exhibiting behavior that is substantially likely to result in injury to the student or to others, or exhibiting other behavior that violates the school's code of conduct that applies to all students.

Elements of Alternative Educational Setting
(Including Interim Alternative Educational Setting)

Decision-making

- IEP team decision making in determining an alternative educational setting must be guided by the requirement to provide a free, appropriate, public education (FAPE) and the principles of the least restrictive environment (LRE) provisions of IDEA, and as such, must consider the placement as an option on a continuum of options available to ensure the provision of FAPE.

- In all cases, the *interim alternative educational setting* is determined by the IEP team and allows the student a) to access the general curriculum, b) to continue to receive services and modifications included in the current IEP, and c) to receive services and modifications designed to address the behavior that prompted disciplinary action so that the behavior does not recur.

Service Options

Alternative educational settings (including interim alternative educational settings) might include options such as:

- placement in another, sometimes more restrictive, special education program; e.g., a self-contained classroom for students with behavioral disorders

- placement in a school-based, non-special education program designed for students with behavior difficulties
- placement in a non-special education program outside the school or school district designed for students with behavior difficulties
- placement in an alternative school
- home instruction

Communication with parents is critical in decision making regarding the selection of an alternative educational setting. The IEP team always includes parents.

Elements of Manifestation Determination

Although described in procedural terms in IDEA and proposed regulations [300.523], a substantive definition of manifestation determination is not provided. Manifestation determination, however, can be viewed as a fundamental consideration in the decision making process regarding a student's initial entitlement to special education, and in decision making related to the design, implementation, and ongoing revision and development of a student's IEP.

Consider that to be entitled to special education, a student must have a disability and also must need special education [300.7(a)(1)]. In the process of evaluating a student and determining that he or she has a disability, the multidisciplinary team identifies the specific needs of the student in relation to his or her disability. Some students have behaviors that are a manifestation of their disability and that are accordingly addressed in the development of their IEP. In these cases, the IEP team has, in effect, conducted a manifestation determination as a part of the process of determining a student's eligibility for special education. As members of the IEP team describe a student's present level of educational performance and select needs to address with IEP goals and objectives, they are also identifying behaviors that are a manifestation of the student's disability; i.e., behaviors that are an integral feature of the disability and need to be the focus of the IEP.

The essential elements of a manifestation determination are based in the following existing provisions in Federal law and state regulations.

Full and individual evaluation [41.48(3)]
The purpose of the full and individual evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education.

Present level of educational performance [41.67(1)]
The statement shall accurately describe the effect of the eligible individual's disability on the individual's performance in any area of education that is affected, including academic areas and nonacademic areas.

Annual goals; instructional objectives [41.67(2)a]
Goals and objectives shall provide a mechanism for determining whether the anticipated outcomes for the individual are being met and whether the placement and services are appropriate to the individual's learning needs.

Special education and participation in general education [41.67(3)c&d]
If modifications (supplementary aids and services) to the general education program are necessary to ensure the individual's participation in that program, those modifications must be described in the individual's IEP. All special education and related services needed by the individual shall be specified in the IEP.

Consideration of special factors [300.346(a)(2)(i) - proposed regulations]
In developing each student's IEP, the IEP team shall, in the case of a student whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, and supports to address the behavior.

Definition of "Behaviorally Disordered" [41.5]
- Setting analysis
- Behavioral data
- Individual trait data

Manifestation Determination Defined

In student discipline matters, manifestation determination is the process of examining the behavior of a student that has prompted disciplinary action and drawing a conclusion as to whether the behavior was an integral feature (manifestation) of the student's disability. More generally, manifestation determination refers to the overall process by which we describe the dynamic relationship of the social, emotional and behavioral needs of students, which in part constitute the special education needs of the student, in relation to the behavioral expectations of the school environment.

Manifestation Determination: Essential Elements

Procedures

The manifestation determination must be conducted by the IEP team (which includes parents) and other qualified personnel.

In conducting the manifestation determination in disciplinary matters, the IEP team must consider all information relevant to the behavior that is the subject of disciplinary action, including:

- Evaluation and diagnostic results, including the results of other relevant information supplied by the student's parents
- Observations of the student
- The student's IEP and placement

Decision making

In a manifestation determination the IEP team must address the following:

- Determine that in relationship to the misbehavior, the IEP, placement, aids and services were appropriate and behavior intervention strategies were consistent with the IEP and placement.
- Determine that the student's disability did not impair his or her ability to understand the impact and consequences of the behavior subject to disciplinary action.
- Determine that the student's disability did not impair the ability of the student to control the behavior subject to the disciplinary action.

If the team determines that any of these standards were not met, the behavior must be considered a manifestation of the student's disability.

If it is determined by the team that the misbehavior was not a manifestation of the student's disability, the school district may proceed to discipline the student as if the student was not receiving special education services. However, when implementing the disciplinary procedures, the final decision maker must consider the student's special education and discipline records.

Conclusion

The IDEA 97 Student Discipline Workgroup recognizes the need for, and intends to promote, the development of more specific procedures and practices that will need to be in place in order for IEP teams to fully implement these requirements. It is hoped that the descriptions of essential elements and definitions of functional behavioral assessment, behavioral intervention plans, interim alternative educational setting, and manifestation determination presented here will provide a sound conceptual basis upon which to base the practice of IEP teams in implementing these new IDEA 97 requirements for student discipline.